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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 RIVERSIDE DIVISION
12

13 **JONATHAN WAYNE BOTTEN,**
14 **SR., et al.,**
15 Plaintiffs,
16 v.
17 **STATE OF CALIFORNIA, et al.,**
18 Defendants.
19

No. 5:23-cv-257 KK (SHKx)

**[Proposed] ORDER GRANTING
STATE DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Date: March 20, 2025
Time: 9:30 a.m.
Courtroom: 3 (3rd Floor)
Judge: Hon. Kenly Kiya Kato
Trial Date: July 28, 2025
Action Filed: February 17, 2023

20
21 The Court, having considered the motion for summary judgment filed by
22 Defendants California Highway Patrol Officers Michael Blackwood, Isaiah Kee,
23 and Bernardo Rubalcava (collectively State Defendants), and all the papers and
24 argument in support and in opposition thereof, and all the pleadings and other
25 evidence, FINDS as follows:

26 Officers Kee and Rubalcava are entitled to summary judgment on Plaintiffs'
27 claim under 42 U.S.C. § 1983 for excessive force under the Fourth Amendment and
28 for battery under California law, because the undisputed facts demonstrate that their

1 use of lethal force against Puga was reasonable under the totality of the
2 circumstances. Because Plaintiffs' claim under the Bane Act is premised on
3 Defendants' violation of Plaintiffs' rights under the Fourth Amendment, the Bane
4 Act also fails.

5 Officers Kee and Rubalcava are entitled to summary judgment on Plaintiffs'
6 claim under 42 U.S.C. § 1983 under the Fourth and Fourteenth Amendments
7 because Plaintiffs have no evidence to show or raise a genuine issue of material fact
8 that Defendants directed or intended to direct their use of force towards Plaintiffs.
9 Nor have Plaintiffs come forward with any evidence to raise a factual dispute that
10 Defendants intended to restrict Plaintiffs' movement through their use of force.

11 Officer Blackwood is entitled to summary judgment on Plaintiffs' negligence
12 claims because he did owe Plaintiffs a duty of care. The undisputed evidence shows
13 that Blackwood did not engage in any conduct that created a risk of harm to the
14 Plaintiffs.

15 Officers Kee and Rubalcava are immune from Plaintiffs' negligence claims
16 under Penal Code section 835a(c)(1)(A).

17 Accordingly, the Court ORDERS as follows:

18 1. The State Defendants' motion for summary judgment as to Plaintiffs' First
19 Amended Complaint is GRANTED.

20 2. The Clerk shall enter judgment in favor of Defendants Blackwood, Kee, and
21 Rubalcava on all of Plaintiffs' claims in this action.

22 3. Plaintiffs shall recover nothing from the State Defendants.

23 IT IS SO ORDERED.

24 DATED: _____, 2024

25 Hon. Kenly Kiya Kato
26 United States District Judge

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